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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

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7 DONNA CORBELLO,

Case No. 2:08-cv-00867-RCJ-PAL

8 Plaintiff,

9 v.

**ORDER**

10 THOMAS GAETANO DEVITO, et al.,

(Mot. Seal – ECF No. 949)

11 Defendants.

12 This matter is before the Court on Plaintiff Donna Corbello's Motion for Leave to File  
13 Under Seal Exhibits to Statement of Facts (ECF Nos. 949), filed June 22, 2016. *See* Sealed  
14 Exhibits (ECF No. 951). No response to this Motion was filed and the time for doing so has now  
15 passed. This Motion is referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and LR  
16 IB 1-3 of the Local Rules of Practice.

17 The Motion seeks leave to file under seal documents submitted as exhibits to Plaintiff's  
18 Separate Statement of Facts (ECF No. 950) in support of Plaintiff's Opposition (ECF No. 952) to  
19 New Defendants' Motion for Partial Summary Judgment (ECF No. 934) on the Issue of Fair Use  
20 and the Absence of Any Remaining Similarities. The Sealed Exhibits (ECF No. 951) attach:

- 21 • Exhibit 10, parts 1 through 3 (ECF Nos. 951, 951-1, 951-2) – a copy of the Work at issue
- 22 in this case;
- 23 • Exhibit 17 (ECF No. 951-3) – Excerpts from a certified transcription of Rex Woodard's
- 24 November 1989 interview with Nick DeVito, bearing control numbers Corbello ID-
- 25 008044 through Corbello ID-008078;
- 26 • Exhibit 18 (ECF No. 951-4) – a copy of certain Defendants' agreement with Metropolitan
- 27 Entertainment Group for the production of a musical stage play about the life and music
- 28 of the Four Seasons, bearing control numbers JB-0005239 through JB-0005261; and

- Exhibit 24 (ECF No. 951-5) – Defendants’ color photocopy copy of the Work at issue in this case, bearing control numbers JB-0032771 through 0033049.

The subject documents were filed under seal because counsel for opposing parties designated the documents as “confidential” pursuant to the parties’ Stipulated Protective Order (ECF No. 94), which requires the moving parties to request permission to file such documents under seal. *See also* Protective Order Governing Confidentiality of Documents (ECF No. 95); (directing the parties to comply with the standards articulated by the Ninth Circuit in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006)).

The Court has previously found compelling reasons to allow Plaintiff to file Exhibits 10, 17, and 24 under seal. *See* Order (ECF No. 136). Compelling reasons are still applicable and Plaintiff’s Motion is granted as to Exhibits 10, 17, and 24. However, the Motion expresses no opinion regarding the confidentiality of Exhibit 18 because Plaintiff was not the party who designated the document as confidential. Defendants did not respond to the Motion with an appropriate showing of compelling reasons for filing under seal.

A party (or parties) who designated documents as confidential is required to meet the *Kamakana* standards to overcome the presumption of public access to judicial files, records, motions, and any exhibits. The court will allow the subject documents to remain sealed temporarily so that the designating parties and their counsel may confer about what, if any, portions of the documents should be sealed or redacted. *See In re Roman Catholic Archbishop of Portland*, 661 F.3d 417, 425 (9th Cir. 2011) (sealing of entire documents is improper when any confidential information can be redacted while leaving meaningful information available to the public). If a designating party determines that a filing or portion thereof should remain sealed, it is required to file within 7 days an appropriate memorandum of points and authorities making a particularized showing why the documents should remain under seal. Pursuant to *Kamakana* and its progeny, any request to seal must set forth good cause or compelling reasons to support sealing of a document submitted with a motion filed with the court. *See Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092 (9th Cir. 2016) (finding that the standards courts apply to

1 sealing requests turn on the relevance of the documents to the substantive merits of a case—not  
2 on the relief sought).

3 Accordingly,

4 **IT IS ORDERED:**

5 1. Plaintiff Donna Corbello's Motion for Leave to File Under Seal Exhibits to Statement  
6 of Facts (ECF Nos. 949) is:

7 a. **GRANTED in part** as to Exhibit 10 (ECF Nos. 951, 951-1, 951-2),  
8 Exhibit 17 (ECF No. 951-3), and Exhibit 24 (ECF No. 951-5); and


9 b. **DENIED without prejudice** as to Exhibit 18 (ECF No. 951-4).

10 2. Exhibit 18 (ECF No. 951-4) shall remain under seal until **August 5, 2016**.

11 3. The designating party (or parties) shall have until **August, 2016**, to file a  
12 memorandum of points and authorities and any supporting declaration or affidavit to  
13 make a particularized showing as to why the documents should remain under seal.

14 4. If the designating party (or parties) fails to timely comply with this Order, the Clerk  
15 of the Court will be directed to unseal the documents to make them available on the  
16 public docket.

17 Dated this 22nd day of July, 2016.

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20 PEGGY A. LEEN  
21 UNITED STATES MAGISTRATE JUDGE  
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